

SWBT to perform make-ready or other work, on MCIm's behalf, on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. The Parties have previously agreed that, on the date of this Agreement, MCIm meets the requirements to be an "authorized contractor" as defined in this section. The term "authorized contractor" does not include contractors performing routine installation, maintenance, or repair work on MCIm's behalf or other contractors who may be selected by MCIm to perform work on MCIm's behalf without SWBT's approval. "Authorized contractors" are contractors selected by MCIm who may, subject to MCIm's direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SWBT persons acting on SWBT's behalf. As used in this Agreement, the term "authorized contractor" does not refer to contracts performing routine installation, maintenance, or repair work on MCIm's behalf or other contractors who may be selected by MCIm to perform work on MCIm's behalf without SWBT's approval. More specifically, the term "authorized contractor" refers only to those contractors included on a list of contractors mutually approved by MCIm and SWBT to perform one or more of the following tasks under within a specified SWBT construction district: (a) installation of those sections of MCIm's ducts or facilities which connect to SWBT's manholes as provided in Section 6.08( c ); (b) installation of inner duct as provided in Section 10.02(b); ( c ) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02( c ); or (d) make-ready work as provided Sections 10.04 and 10.05. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SWBT construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SWBT construction district constitute approval of such authorized contractor for the area served by a different SWBT construction district; provided, however, that if a specific construction jobs extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SWBT construction districts in which the work is to be performed. As order by the Missouri Public Service Commission in the Arbitration Order in Case No. TO-97-67, MCIm, as a qualified contractor, shall be considered as authorized contractor and may perform any work that an authorized contractor may perform.

3.07 Available. When used with respect to pole, duct, conduit, and right-of-way space, the term "available" refers to space that is not occupied or assigned. In conduit systems owned or controlled by SWBT, maintenance ducts will not be considered "available" for assignment. All other unassigned ducts, inner ducts, sub-ducts, and

partitioned conduits in a conduit system owned or controlled by SWBT will be deemed available for assignment.

*3.07(a) Capacity, Safety, Reliability, or Engineering Concerns. Wherever the above terms are used separately or in any combination, capitalized or not, such terms shall be construed consistently with FCC rulings under the Pole Attachment Act, including but not limited to the First Report and Order, CC Docket Number 96-98.*

3.08 Conduit. The term "conduit" refers to all conduits subject to the Pole Attachment Act. In general, a conduit is a tube or structure, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and other facilities. Except as the context otherwise requires, the term "conduit" refers to conduit (including ducts, manholes, and hand holes) owned or controlled by SWBT, solely or in part, including **ducts and but not limited to** the re-enterable manholes and handholes used to connect ducts and provide access to the cables, wires, and **other** facilities within the ducts *and CEVs, huts, cabinets and similar structures*. [Missouri Award No. 16(2)]

3.09 Conduit occupancy. The term "conduit occupancy" refers to the presence of wire, cable, optical conductors, or other facilities within any part of SWBT's conduit system.

3.10 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. In this Agreement, the term refers to conduit systems owned or controlled by SWBT, solely or in part.

3.11 Duct. The term "duct" refers to all ducts subject to the Pole Attachment Act. In general, a "duct" is single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Agreement, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels. Except as the context otherwise requires, the term "duct" refers to ducts owned or controlled, solely or in part, by SWBT **and shall include those ducts contained in CEVs, huts, cabinets and similar structures**. [Missouri Award No. 16(2)]

3.12 Facilities. The terms "facility" and "facilities" refer to any property, equipment, or items owned or controlled by any person or entity.

3.13 FCC. The acronym "FCC" refers to the Federal Communications Commission.

3.13A Hazardous substances. The term "hazardous substances" refers to hazardous and toxic substances, waste, pollutants, contaminants, and materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act

("CERCLA"), 42 U.S.C. § 9601(14), as amended, and other federal, state, and local health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Agreement, including but not limited to the Occupational Safety and Health Act ("OSHA"). In general, the term "hazardous substances" refers to any substance the presence, use, transport, abandonment, or disposal of which (a) requires investigation, remediation, compensation, fine, or penalty under health, safety, and environmental laws, ordinances, statutes, rules, and regulations applicable to sites subject to this Agreement or (b) poses risks to human health, safety, or the environment and is regulated under any such ordinances, statutes, rules, and regulations.

3.14 Jacket. The term "jacket" refers to a single enclosed outer covering containing communications wires, fibers, or other communications media. As used in this Agreement, the term "jacket" refers to the outermost sheath or jacket of a cable.

3.15 Joint user. The term "joint user" refers to any person or entity which has entered or may enter into an agreement or arrangement with SWBT permitting it to attach its facilities to SWBT's poles or anchors or place its facilities in SWBT's ducts, conduits or rights-of-way.

3.16 License. The term "license" refers to a written instrument confirming that SWBT has afforded MCIm or another joint user access to specific space on or within a pole, duct, conduit, or right-of-way owned or controlled by SWBT in accordance with applicable federal and state laws and regulations. The term "license" includes licenses issued by SWBT pursuant to this Agreement and may, if the context requires, refer to licenses issued by SWBT prior to the date of this Agreement.

3.17 Local service provider ("LSP"). The terms "local service provider" and "LSP" refer to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this Agreement, these terms include SWBT.

3.18 Maintenance duct. The term "maintenance duct" refers to a full-sized duct (typically 3-inches in diameter or larger) which may be used, on a short-term basis, for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SWBT, MCIm, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Section 15 of this Agreement and (b) short-term non-emergency maintenance or repair activities as provided in Sections 12 and 13 of this Agreement. No more than one full-sized duct within any given conduit system cross-section will be designated by SWBT as the maintenance duct. In those locations where, on the effective date of this Agreement, there is not a full-sized duct available to be used as a maintenance duct, SWBT will designate an inner duct, if one is available, as the

maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section where such inner duct is located. The term "maintenance duct" does not include ducts and conduits extending from a SWBT manhole to customer premises. Maintenance ducts will not be considered "available" (as defined in Section 3.07) for assignment to SWBT, MCI, or joint users for purposes other than short-term uses contemplated in this section; provided, however, that SWBT may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct.

3.19 **Make-ready work.** The term "make-ready work" refers to all work performed or to be performed to prepare SWBT's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of MCI's facilities. "Make-ready work" includes, but is not limited to, clearing obstructions (e.g., by "rodding" ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required to accommodate MCI's facilities (as distinguished from work required for the purpose of meeting SWBT's business needs or convenience). "Make-ready work" may require "dig-ups" of existing facilities and may include the repair, enlargement or modification of SWBT's facilities (including, but not limited to, poles, ducts, conduits, handholes, and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, anchor, duct, conduit, manhole, handhole, or right-of-way usable for the initial placement of MCI's facilities. As used in this Agreement, the term "make-ready" work also includes associated planning and engineering work required to determine or confirm the extent of make-ready work required to perform make-ready projects.

3.20 **Manhole /Handhole.** The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface usually covered with a cast iron, cast aluminum, steel, or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit system. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter.

3.21 **Occupancy.** The term "occupancy" refers to the physical presence of facilities on a pole, in a duct or conduit, or within a right-of-way.

3.22 **Overlashing.** The term "overlashing" refers to the practice of placing an additional cable or inner duct by lashing such cable or inner duct with spinning wire over existing cables and the strands which support those cables or inner ducts.

3.23 **Person acting on SWBT's behalf.** The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms include both natural persons and firms and ventures of every type, including but not limited to

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corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on SWBT's behalf," "personnel performing work on SWBT's behalf," and similar terms specifically include, but are not limited to, SWBT, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by SWBT and their respective officers, directors, employees, agents, and representatives. An authorized contractor selected by SWBT to perform make-ready work shall be deemed to be a person acting on SWBT's behalf.

3.24 Person acting on MCIm's behalf. The terms "person acting on MCIm's behalf," "personnel performing work on MCIm's behalf," and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms "person acting on MCIm's behalf," "personnel performing work on MCIm's behalf," and similar terms specifically include, but are not limited to, MCIm, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by MCIm and their respective officers, directors, employees, agents, and representatives. An authorized contractor selected by MCIm to perform make-ready work shall be deemed to be a person acting on MCIm's behalf.

3.25 Pole. The term "pole" refers to all poles subject to the Pole Attachment Act. Except as the context otherwise requires, the term "pole" refers only to poles and anchors which are owned or controlled solely or in part, by SWBT.

3.26 Pole Attachment. The term "pole attachment" refers to the connection of a facility to poles and includes any item attached to or supported by a pole or by any anchors, bolts, cables, clamps, guys, strands, or other hardware affixed to or associated with the pole. Examples of pole attachments are grounding and transmission cable, mechanical hardware, and equipment boxes.

3.27 Pole Attachment Act. The term "Pole Attachment Act" refers to those provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, now codified as 47 U.S.C. § 224.

3.28 Pre-license survey. The term "pre-license survey" refers to work and activities performed or to be performed by SWBT or by persons acting on SWBT's behalf for the primary purpose of:

- (a) determining or confirming the existing availability and capacity of a pole, duct, conduit, or right-of-way and identifying capacity, safety, reliability, or engineering concerns, if any, relating to MCIm's application;
- (b) determining or confirming the extent, if any, to which modifications to

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SWBT's poles, ducts, conduits, or right-of-ways are required to accommodate MCIIm's facilities;

(c) determining or confirming what make-ready work, if any, will be required to prepare SWBT's poles, ducts, conduits, or rights-of-way to accommodate MCIIm's facilities; and

(d) estimating the costs, if any, that MCIIm will be required to pay for any such make-ready work or facilities modifications.

3.29 Pre-occupancy survey. The term "pre-occupancy survey" refers to work and activities performed or to be performed by MCIIm or persons acting on MCIIm's behalf for the primary purpose of enabling MCIIm to determine:

(a) whether SWBT's poles, ducts, conduits, or rights-of-way, in their existing condition, are suitable for MCIIm's intended use;

(b) the extent, if any, to which physical modifications of SWBT's poles, ducts, conduits, or rights-of-way will be proposed by MCIIm to expand the capacity of SWBT's poles, ducts, conduits, or rights-of-way to accommodate MCIIm's facilities; and

(c) what other make-ready work, if any, will be proposed by MCIIm to prepare SWBT's poles, ducts, conduits, and rights-of-way to accommodate MCIIm's facilities.

3.30 Rights-of-way. The term "rights-of-way" refers to all rights-of-way subject to the Pole Attachment Act. In general, rights-of-way are legal rights to pass over or through or otherwise use land for limited purposes as defined in a statute, ordinance, easement, grant or other conveyance. Rights-of-way include but are not limited to (a) public rights-of-way authorizing SWBT to locate facilities on, under, or over public lands and roadways, and (b) servitudes created by private easements or obtained through the exercise of eminent domain authority enabling SWBT to pass over, place facilities on, and have rights of ingress and egress to the land of another. Rights-of-way also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SWBT's facilities. Except as the context otherwise requires, the term "rights-of-way" refer only to rights-of-way owned or controlled in whole or in part, by SWBT. As used in this Agreement, the term "right-of-way" may also include certain fee-owned or leased property acquired by SWBT for the specific purpose of installing poles, ducts, or conduits or burying underground cables which are part of SWBT's network distribution facilities. *Rights-of-way include rights-of-way containing CEVs, huts, cabinets and similar structures.* [Missouri Award No. 16(2)]

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3.31 Sheath. The term "sheath" refers to an enclosed covering containing communications wires, fibers, or other communications media. A cable may include both inner and outer sheaths.

3.32 Spinning. The term "spinning" refers to a method of attaching a cable or inner-duct to a supporting strand. "Spinning" is sometimes referred to as "lashing."

3.33 State. When capitalized, the term "State" (as used in terms such as "this State") refers to the State of Missouri.

3.34 Strand. The term "strand" refers to support wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability or supporting wires, cable, and associated facilities. The term "strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "anchor/guy strands," "down guys," "guy strands," "pole-to-pole guys," and "messengers."

3.35 Telecommunications Act of 1996. The term "Telecommunications Act of 1996" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, enacted February 8, 1996.

3.36 Third party. The terms "third party" and "third parties" refer to persons and entities other than the Parties to this Agreement (that is, persons and entities other than MCI and SWBT).

3.37 Vault. The term "vault" generally refers to central office vaults and controlled environment vaults ("CEVs").

3.38 "Vicinity of ...." When used in terms such as "vicinity of SWBT's conduit system," "vicinity of SWBT's poles," "vicinity of SWBT's rights-of-way," or "vicinity of SWBT's poles, ducts, conduits, or rights-of-way," the term "vicinity of ..." includes sites on, within, near to, surrounding, or adjoining SWBT's poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SWBT pole, duct, conduit, or right-of-way. **Notwithstanding the above, "vicinity of..." shall not include any MCI facilities which are owned, leased, licensed, or otherwise occupied by MCI pursuant to a deed, lease, license, easement or other agreement, other than this Agreement.**

#### Section 4: Nature and Scope of Agreement

4.01 Scope of Agreement. *SWBT will provide MCI (and other telecommunications carriers, cable television systems, and competing providers of telecommunications services) with nondiscriminatory access to the poles, ducts,*

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*conduits, and rights-of-way owned or controlled by SWBT and located within this State on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. § 224. This Agreement establishes the rates, terms, conditions, and procedures for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State, without regard to whether such poles, ducts, conduits, or rights-of-way are located on public or private property. [Missouri Award No. 16(2)]*

4.02 No Transfer of Property Rights. Nothing contained in this Agreement or any license subject to this Agreement shall create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other. The payment of fees and charges as provided by this Agreement and licenses issued hereunder shall not create or vest (or be construed as creating or vesting) in either Party any right, title, or interest in or to any real or personal property owned by the other. No use, however extended, of SWBT's poles, ducts, conduits, or rights-of-way shall create or vest (or be construed as creating or vesting) in MCIIm any right, title, or interest in or to any real or personal property owned by SWBT, and the placement of MCIIm's facilities on or in SWBT's poles, ducts, conduits and rights-of-way shall not create or vest in SWBT any right, title, or interest in such facilities.

4.03 No Effect on SWBT's Right to Convey, Transfer, or Abandon Poles, Ducts, Conduits, and Rights-of-Way. MCIIm's access rights to poles, ducts, conduits, and rights-of-way under this Agreement and licenses subject to this Agreement extend only to poles, ducts, conduits, and rights-of-way owned or controlled solely or in part by SWBT while such poles, ducts, conduits, or rights-of-way remain under SWBT's ownership or control. Except as provided in subsections (a)-(c) of this section, nothing contained in this Agreement or any license subject to this Agreement shall be construed as restricting SWBT's right to abandon, convey, or transfer to any person or entity SWBT's interest in any of SWBT's poles, ducts, conduits, or rights-of-way

(a) SWBT shall give MCIIm no less than 60 days written notice prior to abandoning, conveying or transferring any pole, duct, conduit, or right-of-way (1) to or in which MCIIm has attached or placed facilities pursuant to this Agreement or (2) with respect to which MCIIm has been assigned pole attachment or conduit occupancy space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.

(b) SWBT represents that it has entered into one or more "joint use pole agreements" with electric utilities located in this State and that such agreements may require SWBT to transfer or convey poles to such electric utilities from time to time. In the event of any such transfer or conveyance, SWBT will, at MCIIm's request, provide MCIIm and the transferee utility with such information as may be necessary to minimize any burdens to MCIIm which may arise out of or in connection with the transfer or conveyance.



- (c) Transfers or conveyances of poles, ducts, conduits, or rights-of-way to any entity controlling, controlled by, or under common control with SWBT or to any entity which acquires or succeeds to ownership of substantially all of SWBT's assets shall be subject to MCI's rights under this Agreement and licenses subject to this Agreement.

4.04 No Effect on SWBT's Rights to Manage its Poles, Ducts, Conduits, and Rights-of-Way. Subject to MCI's rights under this Agreement and applicable federal and state laws, rules, regulations, and commission orders, including, but not limited to, 47 C.F.R. Sec. 1.1403 (requiring 60 days' notice of contemplated modifications), SWBT may (a) locate, relocate, move, replace, modify, maintain, and remove all poles, ducts, conduits, and rights-of-way subject to this Agreement at any time and in any manner as SWBT deems appropriate and (b) enter into new agreements or arrangements with other persons or entities permitting them to attach facilities to SWBT's poles or place facilities in or on SWBT's ducts, conduits, or rights-of-way.

4.05 No Right to Interfere. Except to the extent expressly provided by the provisions of this Agreement the provisions of this Agreement shall not be construed as authorizing either Party to this Agreement, or persons acting on their behalf, to rearrange or interfere in any way with (a) the facilities of the other Party or joint users (b) the use of or access to such facilities by the other Party or joint users, or (c) the ability of either Party or joint users to conduct normal business operations, serve their respective customers, or avail themselves of new business opportunities..

4.06 Required Franchises, Permits, Certificates, and Licenses. This Agreement shall not be construed as relieving either party from any obligations or approvals it may have to obtain legal authority to construct, operate, maintain, repair, and remove its facilities on public or private property (including but not limited to any required franchises, permits, certificates, licenses, easements, or the like) from all appropriate public authorities and private persons or entities, to the degree any such approvals are necessary.

4.07 Third-party Beneficiaries. Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

## Section 5: Access To Rights-of-Way

5.01 Public Rights-of-Way. SWBT and MCI agree that neither Party has the right to restrict or interfere with the other Party's lawful access to and use of public rights-of-way. Except as otherwise specifically provided in this Agreement, SWBT and MCI shall each be responsible for obtaining their own rights-of-way and permission

to use real or personal property owned or controlled by any governmental body to the extent such additional permission is necessary..

5.02 Private Rights-of-Way Not Owned or Controlled by SWBT. SWBT and MCIIm agree that neither Party has the right to restrict or interfere with the other Party's access to private rights-of-way not owned or controlled by SWBT. Each Party shall make its own, independent legal assessment of its right to enter upon or use the land or property of third-Party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.

5.03 Access to Rights-of-Way Generally. Each pole attachment and conduit occupancy license issued under or made subject to this Agreement shall include access to and use of all associated rights-of-way including, but not limited to, rights-of-way required by MCIIm for ingress, egress, or other access to any sites where SWBT's poles or any part of SWBT's conduit system are located, but only to the extent, if any, that SWBT has the legal authority to grant such access and use. *SWBT will place no restrictions on MCIIm's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SWBT places on itself.* [Missouri Award No. 16(2)]

5.03A Special Procedures for Obtaining Access to Third-party Property. Although SWBT will afford access to rights-of-way owned or controlled by it and permit MCIIm to utilize SWBT's rights-of-way to the extent that SWBT has legal authority to do so, MCIIm acknowledges that SWBT may not own or control certain rights-of-way to the extent necessary to permit MCIIm full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate in those situations in which SWBT does not have authority to permit MCIIm access or either Party has a good faith belief that SWBT does not have such authority:

- (a) *MCIIm will first attempt to obtain right-of-way directly from the property owner.*
- (b) *If MCIIm has the right of eminent domain under state law, MCIIm will independently attempt to obtain the right-of-way it seeks through the exercise of that right.*
- (c) *If MCIIm is unable to obtain access to a right-of-way under subsections (a) or (b) above, MCIIm may request in writing that SWBT exercise its right of eminent domain to condemn the right-of-way for MCIIm's use and SWBT will respond to MCIIm's written request within 45 days. SWBT will exercise its right of eminent domain on MCIIm's behalf only if permitted to do so under applicable state law, and only if MCIIm agrees to bear all costs and expenses, including but not limited to legal fees, arising out of or in*

connection with the condemnation proceedings. [Missouri Award No. 16(2)]

5.04 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. *SWBT also shall provide non-discriminatory access, as provided in Sections 4.01, 5.03 and 5.03A above, to rights-of-way containing Controlled Environmental Vaults (CEVs), huts, cabinets and similar structures.* [Missouri Award No. 16(2)] Neither party shall construct facilities or conduct activities on any such right-of-way in a manner which interferes with the other party's access to or ability to use facilities earlier placed in any such right-of-way. This section relates only to access to rights-of-way and not to the CEVs, huts, cabinets, and similar structures located on such rights-of-way.

## Section 6: Specifications

6.01 Compliance with Requirements, Specifications, and Standards. MCIm agrees that MCIm's facilities attached to SWBT's poles or occupying space in SWBT's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Agreement.

6.02 [Reserved]

6.03 Infrequent Construction Techniques and Connectivity Solutions. Unless precluded by documented engineering criteria or written guidelines SWBT applied to itself as of January 1, 1996, consistent with considerations of safety, reliability, or sound engineering practices, SWBT will permit MCIm at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SWBT's conduit systems. MCIm acknowledges that use of the above techniques will be rare and will be permitted only on a case-by-case basis. Extension arms or stand-off brackets, if utilized, shall be installed as make-ready work in accordance with SWBT's specifications and at MCIm's expense. Once installed, extension arms and stand-off brackets shall become part of the pole and shall be owned by SWBT. Unused capacity on any such extension arms or stand-off brackets shall be deemed "available" (as defined in Section 3.07) for assignment.

6.04 Published Standards. SWBT and MCIm agree that the following standards equally apply to either Party with respect to facilities attached to or placed in SWBT's poles, ducts, conduits, and rights-of-way and further agree that facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:

- (a) the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";
- (b) the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and
- (c) the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").

6.05 Additional Electrical Design Specifications: Conduit. The Parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SWBT's conduit system after the effective date of this Agreement shall meet the electrical design specifications set forth in this section.

- (a) No facilities shall be placed in SWBT's conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither Party shall place any facility in SWBT's conduit system which causes or may cause electrical interference with the facilities of the other Party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either Party or a joint user. If either Party is notified by the other Party or a joint user that its facilities are causing, or have the potential to cause, unacceptable levels of electrical interference, the Party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining Party or joint user to resolve the issue.
- (b) Facilities placed in SWBT's conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
- (c) Facilities placed in SWBT's conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
- (d) No coaxial cable shall be placed in SWBT's conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
- (e) Coaxial cable placed in SWBT's conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not

exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

(f) Neither Party shall circumvent the corrosion mitigation measures of the other Party or joint users.

6.06 Additional Physical Design Specifications: Conduit. Facilities placed in SWBT's conduit system following the effective date of this Agreement shall meet all of the following physical design specifications:

(a) Except as otherwise specifically agreed in this Agreement or licenses subject to this Agreement, MCIm's facilities shall enter SWBT's conduit system at locations consistent with the physical design specifications that SWBT applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g. through the licensing process) by the Parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).

(b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SWBT's conduit or ducts.

(c) The integrity of SWBT's conduit system and overall safety of personnel require that "dielectric cable" be used within SWBT's conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmissions facility such as the facilities of a power utility.

(d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes, or handholes.

6.07 Efficient Use of Conduit. To ensure efficient use of conduits, SWBT will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically 3 or 4 inner ducts in a full 4-inch duct) as needed for SWBT's own business purposes and to accommodate MCIm and other joint users, provided, however, that SWBT will not be required to install inner duct in advance of need or in anticipation of potential future requests for access by MCIm and other joint users.

6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Agreement or licenses issued hereunder, or as mutually agreed upon by the Parties in writing, the following specifications apply to connections of MCIm's ducts and conduit to SWBT's conduit system:

(a) MCIm shall not bore, make, or enlarge any hole in, or otherwise

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structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SWBT's conduit system except as provided in this Agreement or licenses issued hereunder, or as mutually agreed upon by the Parties in writing.

(b) Nothing contained in subsection (a) shall be construed as precluding MCIm or an authorized contractor from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placement and splicing of MCIm's cable.

(c) Where MCIm's duct or facility physically connects with SWBT's manhole, the section of MCIm's duct or facility which connects to SWBT's manhole shall be installed by SWBT or its contractor at MCIm's expense (which will be SWBT's actual costs or the price charged SWBT by the contractor performing such work). SWBT will perform this work in an interval consistent with the intervals SWBT performs work for itself. If SWBT's interval for beginning or completing this work does not meet MCIm's needs, MCIm may (as an authorized contractor) perform the work itself or arrange for the work to be performed by an authorized contractor selected by MCIm from a list, jointly developed by MCIm and SWBT, of mutually agreed contractors qualified to perform such work. **Work performed by MCIm or an authorized contractor selected by MCIm to perform work under this subsection shall be performed in accordance with both Parties' specifications and in accordance with both Parties' standards and practices. Each Party shall indemnify and on request defend the other Party from any damages or claims resulting from the performance of work by the indemnifying Party or by persons acting on the indemnifying Party's behalf under this subsection.**

(d) SWBT will have the option to monitor the entrance and exit of MCIm's facilities into SWBT's conduit system and the physical placement of MCIm's facilities in and removal of such facilities from any part of SWBT's conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Agreement.

(e) If MCIm constructs or utilizes a duct connected to SWBT's conduit system, the duct and all connections between that duct and SWBT's conduit system shall be sealed to prevent the entry of gases or liquids into SWBT's conduit system. If MCIm's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SWBT's conduit system.

#### 6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public

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Safety. The Parties contemplate that MCIIm, its contractors, and other persons acting on MCIIm's behalf will perform work for MCIIm on, within, and in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. Except as otherwise specifically provided in this Agreement, MCIIm shall be responsible for selecting, directing the work of, and discharging its employees and other persons acting on MCIIm's behalf. MCIIm and all contractors, subcontractors, and other vendors acting on MCIIm's behalf shall be solely responsible for all matters relating to compensation of their respective employees, including but not limited to compliance with all laws, rules, regulations, and agency orders relating to withholding taxes, social security taxes, and all other employment-related taxes. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SWBT, MCIIm and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, to assure the financial responsibility of all persons and entities performing work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way, and to protect the public at large. The requirements of this section shall be reciprocal and shall apply to SWBT and personnel acting on SWBT's behalf to the same extent they apply to MCIIm.

- (a) Contractors, subcontractors, and other vendors, including authorized contractors, performing work on MCIIm's behalf on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way shall meet the same financial responsibility (insurance and bonding) requirements generally applicable to contractors, subcontractors, and vendors performing work on SWBT's behalf on, within, or in the vicinity of such poles, ducts, conduits, or rights-of-way. SWBT shall advise MCIIm of SWBT's requirements and any changes in such requirements.
- (b) Only properly trained persons shall work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way. MCIIm shall be responsible for determining that all such persons acting on MCIIm's behalf have proper training.
- (c) Neither Party nor any person acting on such Party's behalf shall permit any person acting on such Party's behalf to climb on or work on SWBT's poles or in the vicinity of SWBT's poles, or enter SWBT's manholes or work within or in the vicinity of SWBT's conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (d) Neither Party nor any person acting on such Party's behalf shall permit any person acting on such Party's behalf to perform any work on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not

limited to the physical condition of the pole or any part of SWBT's conduit system) are sufficiently safe for the work to be performed. If MCIm or any person acting on MCIm's behalf determines that the condition of any pole, duct, conduit, or right-of-way is not safe enough for the work to be performed, MCIm shall notify SWBT of conditions at the site and shall not proceed with the work until MCIm is satisfied that the work can be safely performed.

(e) Neither Party nor any person acting on such Party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way.

(f) When MCIm or personnel performing work on MCIm's behalf are working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, such personnel shall follow procedures which MCIm deems appropriate for the protection of persons and property. MCIm shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. MCIm or its **designated contractor** shall provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. MCIm and its contractors shall have sole responsibility for the safety of all personnel performing work on MCIm's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes.

(g) Neither Party nor any persons acting on such Party's behalf shall engage in any conduct which damages public or private property in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, interferes in any way with the use or enjoyment of such public or private property, except as expressly permitted by the owner of such property, or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to exclude others from the premises or give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).

(h) MCIm shall promptly suspend activities on, within, or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way (other than sites owned or controlled by MCIm) if notified by SWBT that such activities create an unreasonable risk of injury to persons or property (including unreasonable



risks of service interruptions). MCIm shall not resume such activities on or in the vicinity of SWBT's poles or rights-of-way until MCIm is satisfied that the work may safely proceed and that hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SWBT's conduit system until both MCIm and SWBT are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that SWBT requires MCIm to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SWBT shall reimburse MCIm for the actual costs resulting from the delay.

(i) All personnel acting on MCIm's behalf shall, while working on or in SWBT's poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SWBT employee or representative, produce such identification.

(j) MCIm and persons acting on MCIm's behalf are encouraged to report unsafe conditions on, within, or in the vicinity of SWBT's poles or conduit system to SWBT.

6.10 Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SWBT's Conduit Systems. When MCIm, its contractors, and other persons acting on MCIm's behalf perform work for MCIm within or in the vicinity of SWBT's ducts, conduits, and rights-of-way where such ducts or conduits are located, they will be guided by the following:

(a) Except as may be mutually agreed upon by the Parties in writing, MCIm shall not "rod" or clear any duct or inner duct in SWBT's conduit system other than a duct or innerduct assigned to MCIm. Following the assignment of a specific duct or inner duct to MCIm, MCIm may request that SWBT rod or p[clear the duct or inner duct. If the duct or innerduct cannot be cleared, SWBT will assign the next available duct or innerduct to MCIm.

(b) Personnel performing work within SWBT's conduit system on either Party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SWBT's conduit system.

(c) Personnel performing work within or in the vicinity of SWBT's conduit system (including any manhole) on either Party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.

(d) All of MCI's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SWBT and applicable to SWBT's own facilities, so long as such standards do not result in an unreasonable denial of access under the Pole Attachment Act.

(e) MCI's facilities shall be plainly identified with MCI's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SWBT for its own facilities.

(f) Manhole pumping and purging required in order to allow MCI's work operations to proceed shall be performed by MCI or its contractor in accordance with the requirements of Section 6.14 and 6.15 of this Agreement.

(g) Planks or other types of platforms shall be supported only by cable rack.

(h) Any leak detection liquid or device used by MCI or personnel performing work on MCI's behalf within or in the vicinity of SWBT's conduit system shall be of a type approved by SWBT and included on SWBT's then-current list of approved types of leak-detection liquids or devices; provided, however, that MCI may use any type of leak detection liquid or device which meets Bellcore's published standards if SWBT has not provided MCI SWBT's list of approved types of leak detection liquids or devices at least 60 days in advance of MCI's work.

(i) Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.

(j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.

(k) Artificial lighting, when required by MCI, will be provided by MCI. Only explosion-proof lighting fixtures shall be used.

(l) Neither Party nor personnel performing work on such Party's behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SWBT's conduit system (including any manhole) during work operations performed within or in the vicinity of SWBT's conduit system.

(m) MCI shall comply with SWBT's standards set by SWBT for its

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own personnel restricting the use of spark-producing tools, equipment, and devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets and the like), provided that such standards have been communicated in writing to MCIIm at least 60 days in advance of the construction, installation, or placement of MCIIm's facilities within SWBT's conduit system.

(n) Cable lubricants used in conduit systems shall be of a type or types approved by SWBT and included on SWBT's then-current list of approved types of cable lubricants; provided, however, that MCIIm may use any type of cable lubricant which meets Bellcore's published standards if SWBT has not provided MCIIm SWBT's list of approved types of cable lubricants at least 60 days in advance of MCIIm's work..

6.11 Opening of Manholes and Access to Rights-of-Way Containing CEVs. The following requirements apply to the opening of SWBT's manholes and access to rights-of-way containing CEVs:

(a) Before entering SWBT's conduit system or rights-of-way containing CEVs (if MCIIm has been granted access to such CEV pursuant to any tariff, facilities collocation agreement, or commission order) to perform non-emergency work *operations MCIIm shall provide SWBT 48 hour prior notice of such work.* [Missouri Award No. 16(3)] Such operations shall be conducted during normal business hours except as otherwise agreed by the Parties. The notice shall state the general nature of the work to be performed. As a courtesy, MCIIm shall, when feasible, provide SWBT with 10 working days advance notice before entering SWBT's conduit system.

(b) An authorized employee or representative of SWBT, acting as a construction inspector, may be present at any time when MCIIm or personnel acting on MCIIm's behalf enter or perform work within SWBT's manhole or at the site of any such CEV.

(c) The Parties contemplate that MCIIm may need to perform operations in SWBT's conduit system and rights-of-way containing CEVs other than during normal business hours and may occasionally require access to such manholes or rights-of-way on shorter notice than contemplated in subsection (a) above. Under these circumstances, MCIIm shall notify SWBT as soon as is reasonably possible of its intent to enter and perform work in the conduit system in a manner other than is specified in subsections (a) and SWBT shall not, without due cause and justification, insist on literal compliance with requirements of subsection (a) in such circumstances.

(d) Each Party must obtain any necessary authorization from appropriate authorities to open manholes for such Party's own conduit work and associated operations therein.

(e) *When an authorized employee or representative of SWBT is present as a construction inspector to review MCIm installation, maintenance, and similar routine work, MCIm shall pay one-half of SWBT's costs attributable to having such employee or representative present. SWBT shall not charge MCIm for more than one such construction observer per site at any given time.*  
[Missouri Award No. 16(3)]

(f) If the actual participation of SWBT personnel in work activities at the site is requested by MCIm or is integral to successful completion of the work, MCIm shall be responsible for paying the costs of all SWBT personnel reasonably needed for such work.

6.12 OSHA Compliance. The Parties agree that:

(a) facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder;

(b) all persons shall, when working on, within, or in the vicinity of SWBT's poles, ducts, conduits, or right-of-way, comply with OSHA and all rules and regulations thereunder.

6.13 Environmental Contaminants. MCIm acknowledges that, from time to time, hazardous substances (as defined in Section 3.13 of this Agreement) may enter SWBT's conduit system and accumulate in manholes or other conduit facilities and that hazardous substances may be present at other sites where SWBT's poles, ducts, conduits, or rights-of-way are located.

(a) MCIm may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit or right-of-way occupied by or assigned to MCIm as MCIm may deem necessary to determine the presence at such sites of hazardous substances. SWBT will assist MCIm, at MCIm's request and expense, in the performance of such inspections and tests.

(b) SWBT makes no representations to MCIm or personnel performing work on MCIm's behalf that SWBT's poles, ducts, conduits, or rights-of-way or any specific portions thereof will be free from hazardous substances at any particular time. Before entering a manhole or performing any work within or in the vicinity of SWBT's conduit system or any other site subject

to access under this Agreement, MCIIm or personnel acting on MCIIm's behalf shall independently determine, to their satisfaction, whether such hazardous substances are present and conduct their work operations accordingly.

(c) Each Party shall promptly notify the other of hazardous substances known by such Party to be present within or in the vicinity of poles, ducts, conduits, or rights-of-way occupied by or assigned to MCIIm pursuant to this Agreement if, in the sole judgment of such Party, such hazardous substances create a serious danger to (1) the health or safety of personnel working within or in the vicinity of the conduit or (2) the physical condition of the other Party's facilities placed or to be placed within the conduit.

(d) The acknowledgments and representations set forth in this section shall not relieve either Party from its responsibility to comply with applicable environmental laws or from any liability arising out of such Party's failure to comply with such laws. Failure to comply with the requirements of this section may, however, be considered in determining issues relating to negligence, causation of injury, and comparative responsibility for injuries to persons, property, and the environment.

6.14 Compliance with Environmental Laws and Regulations. MCIIm and SWBT agree to comply with the following provisions relating to compliance with environmental laws and regulations.

(a) Facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way following the effective date of this Agreement shall be constructed, placed, maintained, repaired, and removed in accordance with all applicable federal, state, and local environmental statutes, ordinances, rules, regulations, and other laws.

(b) All persons acting on MCIIm's or SWBT's behalf, including but not limited to MCIIm's or SWBT's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SWBT's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations. MCIIm and personnel acting on MCIIm's behalf are expected to be familiar with their obligations under environmental laws such as the Resource Conservation and Recovery Act (42 U.S.C. §§ 9601 et seq.), the Toxic Substance Control Act (15 U.S.C. §§ 2601-2629), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j).

(c) From and after the effective date of this Agreement, neither party

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nor personnel acting on either Party's behalf shall discharge water or any other substance from any SWBT manhole or other conduit facility onto public or private property, including, but not limited to, any storm water drainage system, without first determining that such discharge would not violate any environmental law, create any environmental risk or hazard, or damage the property of any person.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). MCIm and SWBT agree that their facilities attached to SWBT's poles or placed in SWBT's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). MCIm and SWBT shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation. Nothing contained in this section shall be construed as precluding either Party from challenging the validity of any statute, ordinance, rule, regulation, or other law.

6.16 Differences in Specifications. To the extent that there may be differences in the specifications, the most stringent specification will apply except as otherwise specifically provided by SWBT in writing. MCIm will consult with SWBT when MCIm is uncertain as to which specification is to be followed.

6.17 MCIm's Responsibility for the Condition of Its Facilities. MCIm will be responsible at all times for the condition of its facilities (including but not limited to those extending from SWBT's poles, ducts, conduits, or rights-of-way directly to any other location) and its compliance with the requirements and specifications of this Section 6 and all applicable laws, rules, regulations, and ordinances, except to the extent any noncompliance is caused by SWBT, except to the extent any noncompliance is caused by SWBT.

## Section 7: Primary Points of Contact, Access To Records, And Pre-Occupancy Inspections

7.01 Designation of Primary Points of Contact. Each Party will, at the request of the other Party, designate a primary point of contact to facilitate communications between the Parties and the timely processing of MCIm's applications for access to SWBT's poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact will be made by written notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact. Designation of primary points of contact pursuant to this Section will not affect notice requirements or other legal requirements set forth in other provisions of this Agreement.

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7.02 Determinations by MCIIm of Suitability and Availability. MCIIm shall make its own, independent assessment of the suitability of SWBT's poles, ducts, conduits, and rights-of-way for MCIIm's intended purposes.

7.03 Access to Records Relating to SWBT's Poles, Ducts, Conduits, and Rights-of-Way. *SWBT shall permit MCIIm reasonable access, subject to non-disclosure agreement and during normal business hours, to its pole and conduit maps and records and also to its cable plat maps, by appointment, on two business days notice. In all instances, such access shall include the ability to take notes and make drawings with reference to those maps and records. [Missouri Award No. 16.1]* This section establishes procedures through which certain records and information relating to SWBT's poles, ducts, conduits, and rights-of-way will be made available to MCIIm. Access to such records and information will be conditioned on MCIIm's execution of a nondisclosure agreement equivalent in substance to (the Nondisclosure Agreement attached to this Agreement as APPENDIX V or such other nondisclosure agreement as shall be mutually acceptable to the Parties, and no person acting on MCIIm's behalf will be granted access to such records and information without first signing such a nondisclosure agreement). [Missouri Award No. 16(1)] MCIIm will reimburse SWBT for all reasonable costs incurred by SWBT in granting MCIIm's requests for access to records and information under this section.

(a) *MCIIm may, at any time after the effective date of this Agreement, request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space. MCIIm will be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the Parties. Access to such maps and records will be by appointment only, and SWBT will make such maps and records available for inspection by MCIIm on two business days advance notice; provided, however, that MCIIm will, as a courtesy, when feasible, provide SWBT with 10 business days advance notice of its intent to examine such records. [Missouri Award No. 16(1)]*

(b) *SWBT will permit MCIIm to take notes and make drawings with reference to SWBT's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space. SWBT will also, at MCIIm's request, permit MCIIm, while on SWBT's premises, to obtain copies, at MCIIm's expense, of pole and conduit maps and records (other than cable plat maps). [Missouri Award No. ] No references to cable counts, cable designations or other cable-specific information, circuit information, or customer-specific information of any kind may be included in any such copies, notes, or drawings; provided,*

however, that MCIm may make estimates regarding the physical characteristics (such as size and weight) of the cables being surveyed when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SWBT's poles, ducts, conduits, and rights-of-way for MCIm's intended uses.

(c) SWBT will provide MCIm the best information available from SWBT's current pole and conduit maps and records, cable plat maps, and other outside plant and construction records. SWBT represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:

- (1) the exact location of the facilities depicted;
- (2) the physical size, characteristics, or condition of the facilities depicted;
- (3) the ducts or inner ducts presently occupied, assigned, or available within any particular conduit segment or manhole;
- (4) the arrangement of facilities attached to a pole, the position of facilities suspended between poles or their relationship to each other and to the ground, or the positioning of cables and other facilities housed within ducts, conduits, manholes or other portions of SWBT's conduit system; and
- (5) other information which must be assessed before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of MCIm's facilities or that the pole, duct, or conduits depicted are suitable for MCIm's intended use.

7.04 Pre-occupancy Inspection of Poles, Ducts, Conduits, and Rights-of-Way. MCIm shall be permitted to view and inspect specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis as provided in this Section.

(a) After the effective date of this Agreement, SWBT shall permit MCIm to view specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis. Nothing contained in this section shall preclude MCIm from visually inspecting SWBT's poles, ducts, conduits, or rights-of-way from any vantage point lawfully accessible to MCIm without SWBT's permission.

(b) MCIm shall not enter any SWBT manhole for the purpose of

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performing a pre-occupancy inspection without complying with all applicable requirements set forth in Section 6 of this Agreement, including but not limited to the provisions of Section 6.11 relating to the opening of manholes.

## Section 8: Pole, Duct, And Conduit Space Assignments

8.01 *Selection of Space.* SWBT must allow MCIm to select the space MCIm will occupy on poles or in conduit systems based upon the same criteria SWBT applies to itself and must provide MCIm information about the network guidelines and engineering protocols used by SWBT in determining the placement of facilities on poles and in conduits. [Missouri Award 16(1)]

8.02 Pole, Duct, and Conduit Space Assignments. Pole, duct, and conduit space selected by MCIm will be assigned to MCIm as provided in this section. Information received by SWBT in connection with this section shall be subject to the provisions of Section 24 of this Agreement (Confidentiality of Information)..

(a) On receipt of MCIm's application for a pole attachment or conduit occupancy license, pole, duct, and conduit space selected by MCIm will be assigned to MCIm for a pre-occupancy period not to exceed 12 months, beginning with the date of such assignment. The assignment and date of assignment will be recorded in the appropriate SWBT records. If such space has been provisionally assigned to MCIm as authorized below in subsection (b), the 12-month pre-occupancy assignment period will begin on the date the provisional assignment is recorded in SWBT's records or the date of SWBT's receipt of MCIm's notice, whichever date first occurs.

(b) SWBT shall, within 60 days after the effective date of this Agreement, adopt interim procedures which will enable pole, duct, and conduit space to be provisionally assigned to MCIm and other applicants prior to the submission of formal applications required pursuant to Section 9.02 of this Agreement. The interim procedures will apply to SWBT as well as to MCIm and other applicants. SWBT may, on 60 days advance notice to MCIm, revise such procedures if such procedures prove to be unworkable, in which event MCIm may challenge SWBT's decision to revise such procedures in accordance with procedures available to MCIm under applicable federal and state laws and regulations. The procedures will enable MCIm and other applicants, by written notice, to advise SWBT of their intent to occupy unassigned space which appears, from SWBT's records, to be available for assignment. Upon receipt of such notice, SWBT shall date and time stamp the notice and provisionally assign the space selected by MCIm or such other applicant by logging and recording the assignment on the appropriate SWBT records. Such records will be available for inspection as provided in Section 7.03 of this Agreement. Space provisionally assigned